

S.B.Civil Second Appeal No.204/2007
LRS of Abdul Sattar
VS
Suganlal & Anr.

Date of order : 13.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.KC Samdariya,for the appellant.
Mr.Shreedhar Purohit, for the respondent.

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Heard learned counsel for the parties.

Learned counsel for the respondent submits that the first appellate court has not decided all the issues and decided the entire appeal by deciding only two issues and, therefore, as per his view also, the matter can be remanded back to the first appellate court without keeping it pending for several years.

Learned counsel for the appellant submits that the matter may be remanded back to the trial court instead of remanding to first appellate court because of the reason that the trial court decided all the issues afresh after remand, which had no jurisdiction to decide the issues again fresh because of the reason that first appellate court's direction to the trial court was only to decide issues nos. 4 and 4A.

Since the appeal deserves to be allowed on the basis of substantial questions nos.1 and 4 as the first appellate court has not decided all the issues, which in the facts of the present case required to be

decided by the first appellate court, therefore, the judgment and decree of the first appellate court dated 15th March, 2007 deserves to be set aside only on this count. Whether the trial court has committed any illegality is also required to be decided by the first appellate court which includes whether the trial court committed error of law by deciding the other issues other than issue no.4 and 4A is also required to be decided by the first appellate court only.

In view of the above reason, the appeal of the appellant is allowed. The judgment and decree of the first appellate court dated 15th March, 2007 is set aside. The matter is remanded back to the first appellate court for deciding the appeal afresh in accordance with law and the appellant and the respondent will be free to make their submissions before the first appellate court as per their stand. Both the parties are directed to appear before the first appellate court on 4th Dec., 2007.

(PRAKASH TATIA), J.

c.p.goyal/-